IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : December 14, 2007

1. CWP No.1793 of 2007

Smt Shakuntla & others vs. The State of Haryana & others

2. CWP No.1813 of 2007

Ram Niwas & others vs The State of Haryana & others

3. CWP No.8015 of 2007

Mukesh & another vs. The State of Haryana & others

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

***

Present : Mr.Shailendra Jain, Advocate
for the petitioners in CWP No.1793 & 1813 of 2007

Mr.N.D.Achint, Advocate
for the petitioners in CWP No.8015 of 2007.

Mr.Ashish Kapoor, Addl.A.G Haryana

Mr.A.K.Pathania, Advocate,
for HSIDC.

***

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

***

RAJIVE BHALLA,J

This order shall dispose of CWP Nos.1793, 1813 and 8015 of 2007, as they impugn the same acquisition proceedings.

Though the petitioners impugn the proceedings for acquisition, the only plea, urged before us, is a prayer that their houses/constructed area be released from acquisition.

CWP No.1793 of 2007

The petitioners claim to be owners in possession of land measuring 13 kanals 2 marlas, comprised in Rect. No.117, Killa No.1/1(4-0), 10(9-2), situated in village Kasan, Tehsil and District Gurgaon. They claim to be residing in 16 rooms constructed over land, comprised in Rect. No.117/10(9-2) and 34 rooms over land, bearing Khasra No.1/1(4-0), apart from a boundary wall, bathrooms, toilets, sheds etc. prior to the issuance of the notification, under Section 4 of the Land Acquisition Act, 1894 (for short herein after referred to as "the Act").

CWP No.1813 of 2007

The petitioners claim to be the owners in possession of land, measuring 22 kanals 16 marlas, bearing Rect No.26, Killa No.21/1(1-8), 22/1(2-0), 21/2(2-2), 22/2(6-0), Rect No.28, Killa No.1/1(3-10), 2/2(7-16), situated at village Khoh, Tehsil and District Gurgaon and claim to be residing in 125 rooms, constructed over the land, prior to the issuance of notification, under Section 4 of the Act. Out of these 75 rooms measure 12x15 feet, and 50 rooms measure 12x10 feet,

CWP No.8015 of 2007

The petitioners claim to be the owners in possession of land, comprised in Rect. No.25, Khasra No.19/1, situated in village Khoh, Tehsil and District Gurgaon. They assert that they constructed their houses in 1999, prior to the issuance of notification, under Section 4 of the Act, and are residing therein.

Counsel for the petitioners contend that the lands, subject matter of the present writ petitions, as also their other land, were initially proposed to be acquired, pursuant to a notification, issued under Section 4 of the Act, dated 15.11.1994, for setting up of industrial model township at Manesar, Tehsil and District Gurgaon. This was followed by a declaration, under Section 6 of the Act, and an award dated 3.4.1997. However, their land was released from acquisition. After release from acquisition, the petitioners constructed their houses and have ever since been residing therein. Despite the aforementioned facts, the State of Haryana issued another notification, under Section 4 of the Act, dated 25.11.2005, proposing to acquire land in villages Manesar, Khoh and Kasan, Tehsil and District Gurgaon, for the ostensible public purpose of using the land for industrial, residential, recreational and other public utilities. The petitioners filed objections, under Section 5A of the Act praying that as they had constructed houses much prior to the issuance of the notification, under Section 4 of the Act, their lands be released from acquisition. The Land Acquisition Collector recommended release of their land on the ground that the construction, raised by the petitioners, existed prior to the issuance of the notification, under Section 4 of the Act. The government, however, disregarded this recommendation and proceeded to issue a declaration, under Section 6 of the Act, dated 24.11.2006.

Counsel for the petitioners, by making a reference to the site plan (Annexure P-3), contend that the land, shown as yellow, has not been acquired, as it is built up abadi land. It is argued that as there is no credible difference between the houses that have not been acquired and the houses, raised by the petitioners, the petitioners are entitled to equal treatment, in

terms of Article 14 of the Constitution and, thus, pray that a direction be issued to the Government to release their land.

It is further argued that on a part of the land, where the State of Haryana proposes to set up the National Automative Testing and Research and Development Infrastructure Project, residential structures marked in yellow, have not been acquired. It is, thus, argued that as admittedly houses have been excluded from the proceedings of acquisition, the State of Haryana be, therefore, directed to release the petitioners' houses from acquisition.

Another argument, raised by counsel for the petitioners, is that their houses abut the village abadi. As the boundary of the village was not extended to accommodate increasing population, the petitioners were constrained to construct their houses on agricultural land outside the village abadi and, therefore, the mere fact that the petitioners' houses are beyond the abadi, would not be a valid ground to draw a distinction between houses situated within or outside the abadi.

In CWP No.8015 of 2007, counsel for the petitioners contends that as the respondents have released the land of other land owners, their houses, which are three in number, be also released.

Counsel for the respondents, on the other hand, while controverting the arguments, raised by counsel for the petitioners, submit that the land is necessary for the public purpose, disclosed in the notifications, issued under Sections 4 and 6 of the Act. No land has been released after the issuance of the notifications, under Sections 4 and 6 of the Act. It is further submitted that the land, shown in yellow, in the site plan, was not acquired, as it falls within the village abadi and, therefore, the

petitioners cannot assert that as the land, shown in yellow, has not been acquired, their land be released. It is further submitted that land has been acquired to set up the National Automative Testing and Research and Development Infrastructure Project at a cost of Rs.1718 crores. The Ministry of Heavy Industries, Government of India, has decided to create three major hubs in the country for testing, homologation and certification facilities apart from providing infrastructure related research in the automative field. Gurgaon, being an important town in the automobile sector, the Government of India decided to establish this center at Manesar. It is further submitted that though the petitioners assert the existence of a large number of rooms, they have not placed any evidence that they are residing therein. The petitioners have apparently rented out these rooms and, therefore, their plea that their houses be released is factually incorrect and false.

It is further submitted that the Land Acquisition Act empowers the State to acquire land, whether vacant or constructed, and as the petitioners would be granted compensation for their structures, they cannot be permitted to pray that their land be released from acquisition.

We have heard learned counsel for the parties and perused the paper book.

The only ground, urged before us, is that the petitioners' super structures i.e their houses be released from acquisition, as similarly situated structures, though located within the abadi, have not been acquired. Admittedly, the land, which has not been acquired, falls within the boundary of the village abadi i.e houses existing within the lal dora of the village. The houses within the village abadi form a compact block. The petitioners'

houses are, admittedly, outside the boundary of the village abadi and have been constructed on agricultural land. Thus, the petitioners cannot claim parity with the houses that fall within the abadi. Even otherwise, the petitioners have failed to place on record any evidence to suggest that they were residing in the structures raised by them. No material, in the shape of ration card, voter identity card, electricity bills etc., which are normal atributes of residence, have been placed before us.

The development of industrial estates, their location, extent of the land required, and the land to be acquired, are decisions that fall within the domain of the government. This Court, in the exercise of writ jurisdiction, would not supplant its opinion as to the aforesaid matters. Governments acquire land, pursuant to powers, drawn from the Land Acquisition Act. The definition of land, as set out in the Act, does not draw a distinction between land and/or structures raised thereon. Therefore, in the exercise of its powers, under the Act, the Government may proceed to acquire land, whether vacant or constructed. The decision to acquire land rests on the subjective satisfaction of the Government, and can only be made subject matter of judicial review, if it discloses a mala fide, arbitrary, or an unreasonable exercise of power or violates the provisions of any existing law. By way of the impugned acquisition proceedings, the government proposes to establish the National Automative Testing and Research and Development Infrastructure Project, a premier institution that would serve the automobile sector. We find no error or infraction in the decision of the State Government to acquire the petitioners' land/structures as would warrant interference. The petitioners cannot take advantage of the fact that lands within the abadi were not acquired.

In view of what has been noticed herein above, the present writ petitions are dismissed with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(UMA NATH SINGH)
JUDGE

December 14, 2007
'kk'